The Polnnesian;

Published Weekly at Honolulu, Oahu, H. I. CHARLES GORDON HOPKINS, Editor.

BUSINESS CARDS.

W. A. ALDRICH, Importer & Dealer in General Merchandise. Honolulu, Onhu, S. 1.

and Produce bought and sold. Agent for the sale of the products of the Lihue Piantagion.

BISHOP & CO., E A NEW EC EL

once in the East corner of 'Makee's Block,' on Kaahumanu street, Honolulu,

Discount first class business paper,
Attend to collecting, &c. &c. &c. 15-tf

WILLIAM BEADLE. FARRIER & GENERAL BLACKSMITH

Marine Street, opposite the Flour Mill. W. B. trusts that his long experience and his skill in horse shoring, for which he can refer to a large number of gentle-men resident in Honolulu, will ensure him a share of public intronage. 51-tf.

C. BREWER 2d, GENERAL COMMISSION MERCHANT, Honolulu, Oahu, S. I. Exer edvanced ou favorable terms for Bills of Exchange on the United States, England, or Prance.

CASTLE & COOKE, Importers & Wholesale and Retail Dealers in General Merchandise. Agents for Dr. Jayne's Medicines. ,

JAS. A. BURDICK. COOPER AND GAUGER. s to inform his friends and the public generally, that he unmenced his Coopering Business at the stand corner of Fort and Hoter streets, and respectfully solicits a share of the public patronage. All orders promptly at-

G. CLARK, Dealer in DRY and FANCY GOODS HOTEL STREET. V.B .- Constantly on hand, a large and select assortment of

Fancy Goods and Trimmings,

J. E. CHAMBERLAIN. TTORNEY AT LAW. fice on the corner of Merchant and Kanhumann streets, up stairs.

Real Estate examined, Conveyancing, Copying, ranslating, &c., &c., done at most rea and with dispatch J. F. COLBURN,

AUCTIONEER, Honolulu, Oahu.

Hawaiian Flour Company, A. P. EVERETT, TREASURER AND AGENT.

W. FISCHER, Cabinet Maker and French Polisher. lotel street, opposite the Government House.

D. N. FLITNER,

CONTINUES his old business at the new store on Kashumanu street, summeters Rated by observations of the sun and stars with a transit instrument accurately adjusted to the meridian of Honolulu. Particular attention given to fine watch repairing. Sextant and Quadrant glasses silvered and adjusted. Charts and Nautical instruments constantly on hand and for

DR. FORD'S Office and Drug Store, Queen Street, near the Market.

hip's Medicine Chests refitted and Prescriptions carefully prepared under the supervision of LANGHERNE. Hot, cold, vapor, shower and medicated Baths, at all hours.

GILMAN & CO., Ship Chandlers and General Agents, Labaina, Mani, S. I. ps supplied with RECRUITS, STORAGE and MONEY.

JOSEPH P. GRISWOLD. Attorney at Law. Office Kanhumann Street, HONOLULU, OAHU.

CHAS. F. GUILLOU, M. D. ATE SURGEON UNITED STATES NAVY ousular Physician to Sick American Seamen, AND GENERAL PRACTITIONER.

OFFICE corner of Kaahumanu and Merchant streets. tendence at Dr. Wood's munsion, Hotel etreet, 37 Office hours from II A. M. to 2 P. M., at other hours

JAMES HEDLEY, PILOT, Rono Kittie, Ascension Isl.

a favorably known for many years as the Pilot of the Lee Harbor in the Island of Ascension, begs to inform his friends that he is on his way back to that Island, and will be prepared to attend to all who may visit that place and re-

H. HACKFELD & CO., General Commission Agents & Ship Chandlers Honolulu, Oahu, H. I.

E. HOFFMANN, Physician and Surgeon,

Cheen sta., Makee & Authon's Block.

S. HOFFMEYER, COMMISSION MERCHANT. Dealer in Ship Chandlery and General Merchandise. LAHAINA, MAUL H L.

Von HOLT & HEUCK,

General Commission Merchants, Honolalu. Onhn. 8. 1

GEORGE G. HOWE, Lumber Merchant, Lumber Yard Corner of Queen and Naunuu Sts on the Punchard Premises. 34 ff

S. JOHNSON, HOUSE CARPENTER, &C., King Street, nearly opposite the Bethel, both in the above line, and hopes to me is a share of owners and Shipmasters, that he has received to the first state of the share line, and hopes to me is a share of owners and Shipmasters, that he has received to the Line of the Lin public patronage.

Honolulu Medical Hall. DR. McKIBBIN, SURGEON, &c.,

Bu removed to the store lately occupied by Dr. Lathrop, in Queen Street, where he will be regularly supplied with Medicine, Perfumery, &c., of the best quality.

I amily Medicines and Prescriptions carefully prepared.

Medicine Cheets examined and refuted on reasonable terms.

Alterdance at the office from S A. M. till 6 P. M. on week days, and from 8 till 11 A. M. on Sundays. At other times at his residence. Union Street. at his residence, Union Street.

TREET, ERULL, KOWARD MOLL. KRULL & MOLL, Importers and Commission Merchants, Kaahumanu st., Makee & Anthon's Bleck.

BUSINESS CARDS.

JAMES LOCKWOOD, TIN AND COPPER SMITH. LAHAINA, MAUL.

, *, All work in his line will be executed with promptness and

NEW COOPERAGE! LEWIS & NORTON, CODE E E E KING STREET, HONOLULU.

THE SUBSCRIBERS WOULD INFORM THEIR Friends, A Shipmasters and the public generally, that they will be sappy, at all times, to greet them at their New Shop on King street, corner of Bethel street, near the Sailor's Home. at their old stand, on Fort street, two doors below the Drug Store of Dr. Judd. All orders with which they may be fa-vored, will be thankfully received and promptly attended to.

Particular Attention paid to Gauging. JAMES L. LEWIS, GEORGE W. NORTON. Terms moderate.

J. W. MARSH, Attorney at Law Office in Honolulu House, over Mr. Whitney's Bookstore. GUST. C. MELCHERS,

MELCHERS & CO., Commission Merchants and Ship Chandlers Honolulu, Oahu, S. L. StoneStore corner of Knahamanu and Merchantsts. Money

GUST. REINERS.

advanced on tavorable terms or Whaler's Ritts on the United States and Europe T. MOSSMAN, JR. MOSSMAN & SON.

Bakers, Grocers and Dealers in Dry Goods

Nunanu St. Honolulu, Onhu, S. I. 35-tt.

B. PITMAN, Dealer in Ship Chandlery and General Merchandise,

Byron's Bay, Hilo, Hawaii.

Ships supplied with general Recruits, Wood, &c., at the shortest notice, and most reasonable terms in exchange for bills or goods adapted to the market. Wanted. Whaler's bills on the United States or Europe, for which money will be advanced on favorable terms.

N. B.—Storage for 3 or 4000 barrels taken at customary rates

C. A. & H F. POOR, Importers & Commission Merchants, Honolulu, Onhu, Sandwich Islands. Island Produce of all kinds bought, sold, and taken in ex-

RITSON & HART, (Successors to HENRY ROBINSON.) WHOLESALE WINE & SPIRIT DEALERS Foot of Kaahumanu St. ROBERT C. JANION,

Merchant and Commisson Agent, Honolulu, Oahu, H. I. GODFREY RHODES.

WHOLESALE DEALER IN WINES and SPIRITS, ALE and PORTER Near the Post-Office, Honolulu. [tf C. P. SAMSING & CO.,

DEALERS IN CHINA GOODS Honolulu, Oahu, H. I. On hand and for sale-SUGAR, MOLASSES, TEA and

B. F. SNOW, General Commission Merchant, Honolulu, Oahu, Hawaiian Islands. AGENT FOR

Regular Line of Boston and Honolulu Packets. Sale of Coffee from the Titcomb Plantation, Sale of Crocker Brothers & Co.'s Yellow Metal. New England Roofing Company.

J. C. SPALDING, COMMISSION MERCHANT & IMPORTER, Honolulu, Oahu, H. I.

WANTED-Bills of Exchange on the U. States and Europe Consignments from abroad promptly attended to Island Produce of all kinds taken in exchange for THOMAS SPENCER,

Ship Chandler and Commission Merchant HONOLULU, OAHU, S. I. Ships supplied with Refreshments, Provisions, &c., at the shortest n stice, on reasonable terms. Whalers' Bills wanted

T. B. SEENEY. C. A. ADAMS. SEENEY & ADAMS,

House, Ship and Ornamental Painters, Honolulu, Oahu, S. I.

** Having taken the stand recently occupied by Mr. Richard Gilliland, beg leave to notify the public that they are prepared to execute all work in their line with dispatch and in good style.

THOMPSON & NEVILLE, BLACKSMITHS Opposite the Custom House, .

Having purchased the premises heretofore occupied by Mr. M. Matthews, are now prepared to execute Ship, Carriage and Cart work on the shoriest notice and on the most rea sonable terms, and they hope by strict attention to busi ness to merit a share of the patronage hitherto bestowed on their predecessor.

CHARLES W. VINCENT, CONTRACTOR AND BUILDER THE UNDERSIGNED would inform his friends and the public, that he has removed his Carpenter Shop to the emises on Fort street, opposite the store of C. Brewer 2nd, and would solicit that patronage beretofore so liberally bestowed. All orders in the various branches of Building, Plans, Specifications and contracts attended to with promptness and dispatch.
CHARLES W VINCENT.

WM. WEBSTER, Land Agent to His Majesty. Office in the King's Garden, Beritania Street

GEORGE WILLIAMS, ACCOUNTANT AND CONVEYANCER, Honolulu, H. I.

J. WORTH, Dealer in General Merchandise, Hilo, Hawaii.

Ships supplied with Recruits at the shortest notice, on reason able terms. Bills of Exchange wanted. 35-ff AGENT FOR LLOYD'S. THE UNDERSIGNED begs to notify to Merchants, Shipowners, and Shipmasters, that he has received the appointment of AGENT at these islands for Laoyd's, Loydon, 47-16 ROBERT C. JANION.

AGENT FOR THE Liverpool Underwriters' Association. owners and Shipmasters, that he has received the appointment of AGENT at these islands for the Licerpool Under-

writer's Association.

HONOLULU AGENCY Hamburg, Bremen, Fire Insurance Company. The undersigned have been appointed Agents for the above Company at this place, and are now prepared to insur-risks against fire in and about Honolulu. Full particu-lars may be obtained at the office of the undersigned. MELCHERS & CO.

ROBERT C. JANION.

KRULL & MOLL, Agents of the Hamburg and Lubeck Underwriters, Honolulu, Onhu, S.

HONOLULU, DECEMBER 18, 1858.

BUSINESS CARDS,

The Northern Assurance Company, (Estab-lished 1836.)

FOR PIRE AND LIFE ASSURANCE AT TOME AND CAPITAL £1,259,760 STERLING. The undersigned has been appointed AGENT for the Sandwich slands. Til ROBERT CHESHIRE JANION, at Honolulu.

foreign Business Cards ..

MCRUER & MERRILL. COMMISSION MERCHANTS AND

AUCTIONEERS. AGENTS OF THE

Regular Dispatch Line of Honolulu Packets. Particular attention paid to forwarding and transhipment of merchandise, sale of whalemen's bills, and other exchange, insurance of merchandise and specie under open policies, supplying whaleships, chartering ships, etc.

47 and 49 California-street. SAN FRANCISCO-Cal. CHARLES BREWER, COMMISSION MEREHANT,

Boston, U. S. Refer to R. W. Wood and C. BREWER 2D. B. F. DENNISON,

Will practice in all the Courts of Washington Territory, and Victoria, V. I.

Collections made and other professional business attended to at all the principal Towns on Puget Sound.

Reference—A. P. Everett, Commission Merchant, Honolulu.

DICKINSON TYPE FOUNDRY.

ATTORNEY AT LAW.

Whatcom. Bellingham Bay, W. T.

PHELPS & DALTON, BOSTON. L. P. Fisher, Agent, : : San Francisco. 17 Orders solicited for Type, Leads, Rules, &c. 96-1f

Mr. JOHN ALEX'R MATHEWS. COMMISSION MERCHANT. 6 QUEEN'S PLACE. SYDNEY. Reference to W. L. GREEN, Esq., Honoluly

HOTELS &C.

German Ocean Restaurant! King street,, between Fort and Bethel sts.

THE Undersigned would inform their friends and the public that they have opened a Restaurant, in the formerly known as Benzler's Restaurant. The house is thoroughly refitted, and the undersigned assure the public that no pains will be spared to give entire satisfaction G. WILHELM & Co. Honolulu 15th October, 1858.

Joe Roderick is on Hand! THIS SEASON AT HIS WELL KNOWN

RESTAURANT
with his house newly fitted and furnished, where he will continue
to serve his patrons with the choicest the market affords. Captains and officers of the ships will find this place most convenient. and all they can desire in the way of civil waiters, excellent sup plies and first rate cooks. N. B. Particular attention is invited to his new private rooms, where parties will be served at all hours with meals, weekly or to order.

COMMERCIAL HOTEL. HENRY MACFARLANE begs to acquain this friends and gentlemen arriving in Honolula, that his hotel will be found to ossessevery requisite accommodation. Wines

Spirits, Ale and Porter of superior quality, Su-perior Billiard Tables and Bowling Alleys. Itol., cold and shower Baths. Corner of Beretania and Nauana streets. Honolulu, Sept. 21, 4853 .- 1v-19 HOTEL De FRANCE.-French Hotel.

VICTOR CHANCEREL, Proprietor begs to inform his friends and the public generally, that he has made extensive improvements in horel premises, that he now hasaccommoda ions for parties of every description. Also, at tacked, a Billiard Saloon, fitted up in superior style. Sleeping Rooms on the premises for families or single gentlemen. The I ar is supplied with the choicest wines and liquors, and the roprietor, grately (for the liberal patrouage heretofore entended to him, begs to assure the public that no pains will be spared to give entire satisfaction to them and strangers visiting Hondulu. COLD and WARM BATHS. P. S Entrance by Fort, Hotel and Union sts. . tf-12

The White Horse Hotel. WM. PEARSON begs to inform his friends and the public generally, that he has made great improvements on his gemises, and that he has now every accommodation for Board ing and Lodgings. Rooms to be had, furnished or unfurnished be well supplied with the choicest Wines, Spirits and Malt Liquors. The Proprietor hopes by strict attention to the wants of his

NATIONAL HOTEL, Corner of Nuuanu and Hotel streets. THE UNDERSIGNED, Proprietor of the above establish ment, would inform his friends and the public, that with his extensive stock of the best brands of Wines and Liquors, new Billiard saloon, Bowling Alleys, and gentlemanly attend ants, nothing is left wanting for their comfort and amuse ment. 22-1y JOSEPH BOOTH.

customers to merit a share of public patronage.

ment. HOUSES, LANDS, &C.

Cottage to Let. A CONVENIENT COTTAGE ADAPTED TO THE WANTS of a small family, situated on Hotel Street, opposite the residence of Capt. Snow. For particulars &c., apply to R. GILLILAND.

TO LET.

minutes walk from the wharf. The houses consist of a large porlor with a splendid view of Nunanu Valley, a dining room, 4 good bedrooms, pantry, cook honse and well. The garden is well stocked with fruit trees and the situation is cool, picturesque and salubrious. A family will find it a most desirable residence. Enquire of JOHN MONTGOMERY, Merchant street. 19-11

For Sale or to Let. THAT DESIRABLE RESIDENCE CORNER FORT AND 1 Chaplin streets. Possession given about the last of October next. Inquire of J. FULLER. Hopolulu, Sept. 16, 1858.

To Let.

For particulars, apply to

stuated in the Valley of Nuastu, about two uiles from town, lately occupied by the Hon. David I. Gregg The above property is beautifully situated on rising ground, surrounded by fruit and shade trees, and in every way furnished with conveniences for a family. Also-In rear of the above, a very pleasant COTTAGE, with Taro Land in a high state of cultivation, and several

JOHN H. BROWN. TO LET. THREE COMFORTABLE, AIRY ROOMS, SITUATED on Alakea street, corner of the former "French" premi-ses, above the Hawaiian Theatre. For terms apply to J. W. PFLUGER, at H. Hackfeld & Co.

Coffee Plantation for Sale!

HOUSES, LANDS, &C.

TO LET,

WITH possession from the 1st of October, MILE END COTTAGE, the residence of G. H. Luce. The house contains Parlor, Sitting Room, 3 Bed Rooms, Dining Room, Cook-house, Bath-house, Carriage-house, Sta-ble, Fowl-house, and every convenience for a family. Water from the Government pipes carried to every part of the house.

ALSO-About one acre of excellent Grazing Land, with a never-failing stream of water running through the same.

TO LET!

THE Chambers over the Store on Kaahumanu A street, lately occupied by the subscriber. Said rooms are

The Store above mentioned, which is fitted with counters, shelves, and fixtures adapted to a wholesale and retail establishment. Apply to (20tf) J. C. SPALDING.

For Sale, or to Let for the Season, with the Furniture! THE TWO-STORY HOUSE SITUATED ON KING ST., below the Maine Hotel. It contains 13 rooms, well furnished, with Cook-House, Pantry, Store-Room, &c. For

particulars, apply at the SAILORS' HOME, -ALSO-Furnished Rooms to Let. TO LET.

THE DESIRABLE PREMISES On King

C. C. HARRIS,

GEO. WILLIAMS.

Or on the premises to To Let,

culars apply at the office of

FOR A TERM OF FIVE YEARS OR MORE, ON reasonable terms, that portion or LOT OF LAND, situated on Waikiki Plain (adjoining the lots on Thomas' Square), and belonging, in fee simple, to Mr. Joseph the defendant has repeatedly notified the hogains to For terms and other particulars, apply by letter addressed to MR. JOSEPH HENRY RAY, or his Attorney, care of the

For Sale or to Let. SEVERAL ELIGIBLE BUILDINGS AND HOUSE LOTS, situated on different parts of Mauna Kea street, onolulu. Terms very moderate. For information to 11-tf J. W. MARSH.

For Sale or Lease. THE AMERICAN HOUSE, ON THE CORNER OF KING and Maunakea Streets, held in fee Enquire of MELCHERS& CO., or

JOHN MONTGOMERY, Merchant Street. FOR SALE OR TO LET. THE DWELLING HOUSE AND PREMISES OCCUPIED BY

Possession given immediately,

FOR SALE OR RENT! THE COMAL STORE ON THE CORNER OF MER A chant and Kaahumanu streets, occupied by Dr. McKibbin cossession given on the first of August next. The premises are 80 by 60 feet, and will be enclosed if desired, and the house put n good order.

If sold the terms will be made easy. Enquire of

olulu, July 26th, 1858. 13tf ASHER B. BATES. For Sale or Lease. THAT NEW AND COMMODIOUS RETAIL STORE ON Maunakea street, facing Hotel street, in Honolulu, fately occupied by E. Hoffmann 2d. Enquire of MELCHERS & CO., or

TO BE SOLD OR LET. THAT COMMODIOUS AND CAPACIOUS STORE AND PREMises on the Eastern corner of King and Mauna Ken Streets held by a lease for five years. Subject to a rent of \$9 per month. Apply to 10-tf JOHN MONTGOMERY.

JOHN MONTGOMERY,

CHAMBERS, TWO IN SUITE. TO BE LET-EDEN CHAMBERS ON NUCANU ST. Rent for every two rooms, \$10 per month, payable in BY Apply to GEORGE WENTZEL.

LARGE AND COMMODIOUS RESIDENCE IN

A Nuuanu Valley, about a mile and a half from town. Terms moderate. Apply 10 W. L. GREI R OOMS TO LET-FROM \$1 PER WEEK. APPLY S. JOHNSON, House Carpenter.

To be Sold or Let.

The Polynesian.

Supreme Court-October Term, 1858. Oni vs. John Meek.

Plaintiff brought an action against the defendant, in the Police court of Honolulu, to recover the value of two horses, taken by the defendant on his land at Honouliuli, and afterwards impounded and sold, as estrays. The defendant agreed that judgment should be entered against him in the court below, reserving to respect its terms. by consent his right to appeal, in order that the case, which involves some questions of great importance,

heard and decided by this court. It appears by the evidence submitted to us that the defendant holds, under three several leases, the entire Kula land of the Ahupuaa of Honouliuli, with the exception of certain portions expressly reserved by the terms of the latest lease, made on the 16th day of February, 1853; that the plaintiff is a kouains of Honouliuli, residing on some part of that Aliupuaa, either upon land awarded to him as a Kuleana, by the L nd Commission, or otherwise; and that two horses belonging to him were seized as estrays by the defendant's order, on some part of the land leased to him, and carried to the government pound, where they were subsequently sold under the

estrav law.

During the argument of the case, great stress was laid by the Plaintiff's counsel upon the clause in the lease of the 16th of February, 1853, which reads as follows, viz: " Aole e hiki i keia hoolimalima ke kue aku i ka pono o na kanaka e noho ana malalo o ka malu o ka aoao mua." That is to say, "This lease shall not be construed as conflicting (or interfering) A LL THOSE WELL ENCLOSED PREMISES HERETO.

A LL THOSE WELL ENCLOSED PREMISES HERETO.

With the rights of the people living under the shade of the party of the first part (the Konohiki.") He pointing Mr. Mongomery's garden, on Smith Bridge and eight argued that by this clause the rights of the plaintiff. and all others living under the shade of the Konohiki, were expressly reserved by the grantor, Mr. Haalelen; and that those rights included the right of pasturage for their animals. Neither the lease of the 3d of March, 1846, which covers the Ili of Lihue, nor that of the 15th of July, 1851, which covers the Ili of Waimanalo, contain any clause parallel to that we have just quoted from the lease of the 16th of February, 1853. So that before the plaintiff could claim to recover, by force of the reservation in favor of the rights of the people living under the Konohiki, made in the lease of 1853, he must first prove that his horses were seized on the land covered by THE LARGE AND COMMODIOUS Dwelling that lease; because it is expressly declared in that lease that neither the Ili of Lihue nor the Ili of Waimanalo are included in it, and that the terms and conditions of the several leases made in 1846, and 1851, are not affected in any way whatever by the lease of 1853. No evidence having been introduced by the plaintiff, to prove that his horses were seized acres of pasturage-out-buildings and every convenience. for trespass upon any part of the land covered by the latter lease, we are of the opinion that, so far as his law upon that subject, it is necessary to examine and claim depends upon the reservation referred to, in | consider together the several enactments in pari masaid lease, it must fall to the ground.

TO LET-SLEEPING ROOMS. ENQUIRE OF MR. single right secured by law to the plaintiff. the Konohiki, had he been so disposed, to alienate a defined the land of every hosnina who succeeded in sustaining a claim before the Board.

But the claim of a right of pasturage, put forward by the plaintiff, is made to rest upon far broader rounds than that just mentioned, which fact renders this case one of great importance, not only to the large landed proprietors throughout the Kingdom, but to thousands of the common people. It is contended on behalf of the plaintiff that he, as a hosaina of Honouliuli, has a right to pasture his animals on the Kula land of that Ahupuaa, upon one or both of two grounds; first, by custom; or second-

ly, by statute law.

It appears by the evidence, that horses were first introduced on the Ahupuna of Honouliuli about the year 1833; that within ten years afterwards they had become numerous, and that the horses belonging to the hoasinas were allowed to pasture upon the kula land, in common with those of the Konohiki. It appears further, that about the year 1851, after the enactment of the new laws relating to the tenure of land, a large number of the hoasinas of Honouliuli, including, as we understand Mr. Haalelea's testimony, some who had obtained awards for their kuleanas, and others who had not, came to Mr. Haalelea, the Konohiki, and expressing their understanding and belief that under the new order of things they would be cut off from the enjoyment of some of their accustomed rights and privileges, including the right or privilege of pasturage, they offered to continue to labor for him, as formerly, upon the Konohiki's labor days, in consideration of his allowing them to enjoy all their accustomed rights and privileges, to which proposition he agreed; that since that time all the hoasins who have duly performed their labor on the Konohiki's days, have been permitted to pasture their horses on the kula land as It appears, also, that within the three years last past the defendant has repeatedly notified the hoasins to remove their horses from the Kula lands leased by

Upon this state of facts, it is argued by the learned counsel for the plaintiff, that he, in common with the other hosainas of Honouliuli, is entitled to the right of pasturage, by custom. On the other hand, it is contended on the part of the defendant, that before the court can sustain this claim on the ground of custom, the custom attempted to be set up must appear to have existed from time immemorial; to be reasonable, to be certain, and not inconsistent with

the laws of the land.

While we are of the opinion that the objection urged by the counsel for the defendant against the custom sought to be set up by the plaintiff, that it is not shown to have obtained from time immemorial, is entitled to great weight, we do not think it necessary to express a conclusive opinion upon that point at present. For it is obvious to us that the custom contended for is so unreasonable, so uncertain, and so repognant to the spirit of the present laws, that it ought not to be sustained by judicial authority. Further, it is perfectly clear that, if the plaintix is a hoasina, holding his land by virtue of a fee simple award from the land commission, he has no pretence for claiming a right of pasturage by custom, annexed to the holding of land by a far different tenure from that by which he now holds-a tenure by which the hoznina was bound to labor a certain number of days in each month, for the immediate lord of the land, and a like number of days for the King or government, as payment or rent, both for the use of the land and for the enjoyment of the other rights and privileges appurtment thereto, whereas the very fact that the plaintiff holds his land by virtue of a fee simple title, frees him forever from the labor formerly due to the government and to the Konohiki; he no longer owes, nor can he be called upon to perform such labor, by law laspay ment for the use of his land, or for the enjoyment of any right or privilege, and if he performs such labor it is neither by force of law or custom, but in fulfilment of a private contract. Again, if the plaintiff claims to be a hosains of Honouliuli, helding his land, not independently, upon an award from the Land Commission, but according to ancient tenure, in dependence upon the Konohiki, and that, therefore, he is entitled to the right of pasturage, by custom, he is met by the testimony of the principa witnesses introduced by himself, to the effect that in the year 1851 he, in common with the other hossinas of Honouliuli, admitted that his former right or privilege of pasturage was determined, by the operation of the new laws affecting the tenure of land, and that he has since been permitted to enjoy the right of pasturage for his horses, not by force of law or custom, but in consideration of certain labor which he has performed, in accordance with a special contract with the JUSTICE ROBERTSON delivered the decision of the Konchiki, to that effect, made at a time when the right of pasturage could not have been said, with any show of reason, to have become established by ancient custom. And whatever private agreement as to pasturage may have existed between the plaintiff and the Konohiki, that, of course, cannot affect the defendant's rights under his leases, unless he had special notice of such agreement, and bound himself

Let us now pass on to the examination of the principal ground upon which the right of pasturage and will determine the rights of many other persons is claimed by the plaintiff, viz: by statute law. The besides the present plaintiff and defendant, might be. law referred to is the "joint resolutions, on the subject of rights in lands and the leasing, purchasing and dividing of the same," passed on the 7th day of November, 1846; which it is contended, and rightly so, have never been expressly repealed by the Legisature. The plaintiff relies, more particularly, upon a part of the first of those resolutions, which reads as follows, viz: "The rights of the hoasina in the land consist of his own taro patches, and all other places which he himself cultivates for his own use, and if he wish to extend his cultivation on unoccupied parts, he has the right to do so. He has also rights in the grass land, if there be any under his care, and he may take grass for his own use or for sale, and may also take fuel and timber from the nountains for himself. He may also pasture his horse and cow and other animals on the land, but not in such numbers as to prevent the Konohiki from pasturing his. He cannot make agreement with others for the pasturage of their animals without the consent of his Konohiki, and the Minister of the

Interior." This declaratory enactment was passed by the Legislature at a time when the old system as to the tenure of lands was still in existence, and before the passage of new laws upon the subject of land titles, the operation of the land Commission, and the great Division of 1848, had brought about and perfected that entire revolution in the law affecting rights in land, and land titles, which has taken place since the year 1846. The character of the old system of tenure, and the state of titles and interests in land. at the time of the passage of the joint resolutions of November, 1846, may readily be gathered from those resolutions themselves, and from the fundamental " Principles adopted by the Board of Commissioners to quiet land titles, in their adjudication of claims presented to them," to be found on pages \$1 to 94, inclusive, of the 2d vol. Statute Laws. While it is true that the joint resolutions referred to, have never been expressly repealed, we think there can be no doubt that, at least those of them which are merely declaratory of the law relating to rights in land, have all been impliedly annulled and superseded by other enactments upon the same subject. In order to ascertain and declare what is now the

teria, which are to be found standing upon the statute And if it can be considered that the line of argu- book. The Joint Resolutions of November, 1846, ment set up by the defendant, waived the necessity of proving this, still we are of the opinion that the sessed in common at that time, by the Government, plaintiff's claim cannot stand upon the narrow basis | the konohiki, and the hozaina, but were siso, in part, of the reservation in the lease, for the clause which directory as to the mode of leasing, purchasing and we have quoted cannot fairly be construed to be any dividing of lands, having due regard to the common THE CELEBRATED TITCOMS COFFEE thing more than simply a reservation of the rights of these several parties. So far as these Re-Plantation, at Hanaiei, Kauai, is offered for sale.
The land of the plantation comprises upwards of 1050 Acres, and has upon it 50,000 before Tree.
The land is well adapted to the cultivation of the clause therefore as of very little practical more expeditious arrangements, for, while the Great importance, inasmuch as those rights would, as it Division of 1848 separated and defined the land of the sold by Pee Simple Title. For full particulars and will be sold by Pee Simple Title. For full particulars and seems to us, have been equally well preserved with the King and Government, and that of each konohiki, terms of sale, enquire of 7-4f B. F. SNOW. out such a clause t and it was not in the newer of the nation of the Land Commission separated and out such a clause; and it was not in the power of the action of the Land Commission separated and

No. 33

that, whenever, in any case, a tract of land was divided between the several parties in interest, those rights which they had previously held in common, while their interests in the land were undivided, should cease to be so held. The fourth Joint Resolution provides that, " If any man wish to obtain an allodial title to the land which he has himself cultivated," he should have the right to petition the Minister of the Interior for the purchase of such land, and if the land was sold and patented, the price obtained therefore was to be divided equally between the Government and the konobiki. The fifth Joint Resolution reads as follows: " Whenever any individual secures an allodial title to his cultivated grounds, as specified above, and the pasture ground and uncultivated parts remain, then that remainder shall belong equally to Government and to the konohiki." The seventh Joint Resolution provides that, " If any konoltiki wish to have his portion of any given ili or ahupuna set off to him according to his rights in the same, that he may procure an allodial title therefor, he may petition the Minister of the Interior, on stamped paper, who shall have power, with the approbation of his Majesty in Privy Council, to complete the arrangements for the same, after which there shall be given to the konohiki a patent for the same." Can it be claimed that, after a division of the land between the several parties, in conformity with the provisions just quoted, the hoaaina still had the right to "pasture his horse and cow and other animals on the land" of the konohiki. to an indefinite extent? We think not. It might with equal propriety be contended that he still had the right "to extend his cultivation on unoccupied parts" of the konohiki's land, without his consent. We are much strengthened in this view of the case by the reading of the Act passed on the 6th day of Angust, 1850, confirming certain Resolutions passed by the King in Privy Council on the 21st day of December, 1849, granting fee simple titles, free of commutation, to native tenants, (or hoaninas) for their cultivated lands and house lots, and also protecting the hosainss in the enjoyment of certain rights therein enumerated, as against the sweeping operation of the konohiki's allodial titles. The 3d section of that act empowered the Land Commission to grant fee simple awards, and to define and separate the portions of land belonging to different individuals, so that each man's land should be by itself. The 6th section reads as follows: " In granting to the people their cultivated grounds, or kalo lands, they shall only be entitled to what they have really cultivated, and which lie in the form of cultivated lands; and not such as the people may have cultivated in different spots, with the seeming intention of enlarging their lots, nor shall they be entitled to the waste lands.

It was evidently the intention of the Legislature

Upon a careful examination of the Joint Resolu-tions of November, 1846, and the Act of the 6th of August, 1850, we find that several of the provisions of the latter are clearly inconsistent with those of the former, and we are of opinion that, so far as this is true, the provisions of 1846 must be held, by necessary implication, to be repealed by those of for so far as that right ever was customary, it was 1850. The first, as we have already intimated, were -passed while the old system of land tenure was still in full force, and the rights of the different parties interested in the land were as yet undivided; the last were passed at a time when the entire change of system which has taken place since 1846 was in full progress, and had already, to a great extent, been achieved. We think the following language, held by the Master of the Rolls, in the case of the Dean of Ely vs. Bliss, applies here: "If two inconsistent acts be passed at different times, the last is to be obeyed, and if obedience cannot be observed without derogating from the first, it is the first which must give way. Every act of Parliament must be considered with reference to the state of the law subsisting when it came into operation, and when it is to be applied, it cannot otherwise be rationally construed. Every act is made, either for the purpose of making a change in the law, or for the purpose of better declaring the law." So, also, the following dictum of Lord Denman, in the case of Reg. vs. Inhabitants of St. Edmund's Salisbury : " While we hold that a positive enactment is not to be restrained by inference, we must also act on the maxim, "leges posteriores priores contrarias abrogant," whenever it comes in operation." (See Dwarris on Statutes, p. 531.) Upon this ground, we must hold that the 1st Joint Resolution, of November, 1846, has been abrogated, and that the enumeration therein contained, of certain specific rights of the hosains, apart from his right to the land he cultivated, has been superseded by the specification of the same rights, contained in the 7th Section of the Act of August,

1850, which specification reads as follows, viz: "When the landlords have taken allodial titles to their lands, the people on each of their lands, shall not be deprived of the right to take firewood, house timber, aho cord, thatch, or ti leaf, from the land on which they live, for their own private use, should they need them, but they shall not have a right to take such articles to sell for profit, They shall also inform the landlord or his agent, and proceed with his consent. The people shall also have a right to drinking water, and running water, and the right of

That it was the intention of the Legislature to

declare, in this enactment, all the specific rights of the hoasins, (except fishing rights,) which should be held to prevail against the fee simple title of the konohiki, we have no doubt. We think this is conclusively shown by the fact that the Legislature, at its next session, in 1851, had its attention renewedly directed to this subject, on which occasion it revised and partially amended the section just quoted, by an act which commences with the following preamble, viz: " Whereas, many difficulties and complaints have arisen from the bad feeling existing on account of the konohikis forbidding the tenants on the lands enjoying the benefits that have been by law given them; Therefore," etc. It was evidently the intention of the Legislature, at the time of the passage of the act of 1850, that the former right of the hoaning to "pasture his horse and cow, and other animals, on the land, but not in such numbers as to prevent the konohi i from pasturing his," should cease to exist. It was inconsistent with the new system and was therefore not preserved on the change of the law. That such was the general understanding throughout the country, after the passage of the act of 1850, clearly appears from the evidence given in this case; and it is matter of history that during several subsequent sessions of the Legislature, petitions were presented for the enactment of a law granting to the common people the right of pasturage on the lands of the konohikis, but without success, on the ground that it would interfere with vested rights. We understand the latest enumeration, by the Legislature, of the specific rights of the hoanina, to be restrictive as against the rights of the konohiki and the Government, and we think, therefore, that the maxim "expressio with est exclusio alterius," (Dwarris on Statutes, p. 605) must be held to apply in this case, with conclusive force; and that too without any distinction as to whether the plaintiff is a kuleana holder, or otherwise; our understanding of the term people, as used in the 7th section of the act of 1850, being that it is synonymous with the term tenants, as used in the law relating to private fisheries, of which we expressed our view in the recent case of Haalelea vs. Montgomery.

Let judgment be entered for the defendant, with costs.

C. C. Harris, Esq., for Plaintiff. A. B. Bates, Esq., for Defendant.

" Steel Biscuits," are among the novelties advertised in the London newspapers. They are represented to be an elegant and very palatable preparation, and medical men pronounce them a most useful and agreeable tonic .- Boston Transcript.

" A man's in no danger so long as he talks his love; but to write it is to impale himself on his own pot hooks." Thou canst not joke an enemy into a friend but

thou mayst a friend into an enemy.